

FREDERICK T. PETERS ET AL.

IBLA 79-172, etc.

Decided June 28, 1979

Consolidated appeals from decisions of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offers.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases:
Applications: Drawings -- Oil and Gas Leases: Applications: Filing

Where oil and gas lease offerors enclose agency statements with their drawing entry cards, which statements are clearly intended to, and appear to, apply to their offers, their cards are fully executed notwithstanding their failure to note on the face of the cards that the agency statements are enclosed, as nothing in the regulations or on the card directs an offeror to do so.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases:
Applications: Drawings -- Oil and Gas Leases: Applications: Filing

Nothing in the regulations requires an agency statement submitted under 43 CFR 3102.6-1(a) to be dated. Rather, the statement is an adjunct to the drawing entry card and is considered dated as of the signing and dating of the card.

3. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases:
Applications: Drawings -- Oil and Gas Leases: Applications: Filing

An agency statement required by 43 CFR 3102.6-1(a) need not be holographically signed. Rather, such statements may be submitted over facsimile signatures.

APPEARANCES: Craig R. Carver, Esq., Denver, Colorado, and Jason R. Warran, Esq., Washington, D.C., for appellants.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Frederick T. Peters *et al.* (appellants) ^{1/} have appealed from the several decisions of the New Mexico State Office, Bureau of Land Management (BLM), rejecting their respective simultaneous noncompetitive oil and gas lease offer drawing entry cards. Inasmuch as these appeals present identical issues, we have consolidated them. Appellants are all clients of the Stewart Capital Corporation (Stewart), which selected the parcels for which appellants applied and affixed facsimiles of their signatures on their respective cards. Photocopies of the agency statements by the offerors and Stewart, as required by 43 CFR 3102.6-1(a)(2), accompanied these offers. These statements all describe the offerors' agreements with Stewart and state that Stewart has no interest in the offers.

On December 21, 1978, and January 2, 1979, BLM issued decisions rejecting these offers. These decisions, the wording of which is the same, provide as follows:

1. The entry card clearly states that compliance must also be made with the provisions of 43 CFR 3102. The entry card filed by Frederick T. Peters does not show that it was accompanied by the statements required by 43 CFR 3102.6-1(a)(2), nor does it show a reference to the serial number of the record in which the power of attorney or agent has been filed and does not have the statement that such authority is still in effect as required by 43 CFR 3102.6-1(a)(1). See Harry Reich, 27 IBLA 123 (1976), which states: "We believe BLM personnel should not have to bear the complete responsibility for assuring that attachments may be easily identified with the particular drawing card since they must be separated from the card during the drawing procedure."

^{1/} See Appendix.

2. The machine copies of the statements submitted by the agent, where an offeror allows an agent to place a rubber stamp or mechanically imprinted signature are defective and unacceptable for the following reasons:

(a) The statements from the offeror and the agent are not dated. The date is important because it shows that as of a particular date the offeror and agent, by their signatures certify to the statements made on the documents.

(b) The regulations 43 CFR 3102.6-1(a)(2) state that if the offer is signed by an attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them

The statement submitted by the offeror must be signed by the offeror personally and such statement being a machine copy does not contain an original signature. See D. E. Pack (On Reconsideration) 38 IBLA 23-73 (1978). The statement submitted by the agent must be signed by the agent personally and such statement being a machine copy does not contain an original signature.

[1] Nothing in 43 CFR 3102 provides that oil and gas offerors who are required by 43 CFR 3102.6-1(a) to file agency statements because their drawing entry cards are signed by their agents must disclose on the faces of their cards that they are attaching these agency statements. Nor is Harry Reich, supra, authority for BLM's conclusion that appellants' failure to so note the cards compels rejection of their offers under 43 CFR 3102.6-1(a). In Reich, we held that an offeror who fails to note on his card that there are other parties in interest to this offer, but instead encloses an apparently unrelated statement therewith, violates the requirements of 43 CFR 3102.7 that the identities and qualifications of all such parties in interest be disclosed. The statement enclosed with the offer card in Reich was not identifiable as the required disclosure of other parties in interest, as it was dated some 6 months in advance of the date of the offer and contained information which was inconsistent with that on the card, in that five parties were named on the statement and only two on the card. BLM had no way to know that there were other parties in interest, as the statement appeared to have no bearing on the offer and the card made no reference to the enclosure. In the instant case, there is no ambiguity either about the applicability of the statements enclosed with appellants' offer cards, or that the statements were submitted in compliance with 43 CFR 3102.6-1(a).

Moreover, the holding in Reich was based on the offerors' failure to fully execute his card as required by 43 CFR 3112.2-1(a). The drawing entry card contains an explicit direction to disclose the existence of other parties in interest as required by 43 CFR 3102.7 in the space provided on the back of the card: "Other parties in interest -- All interest parties named below must furnish evidence of their qualifications to hold such lease interest. See 43 CFR 3102.7 [Emphasis supplied in part]." This statement is followed by a space clearly designated as being for listing of "Other parties in interest." The rejection of the offer in Reich was due to the offerors' failure to indicate the existence of other parties in interest as directed on the card, or, alternatively, to refer BLM to the enclosure putatively so indicating by making a notation in the space provided. This failure justified the conclusion that the card was not "fully executed" as required by 43 CFR 3112.2-1(a) and was therefore defective.

There is no similar space provided on the drawing entry card for the offeror or his agent to indicate that the card was signed by the agent or that the agency statement required by 43 CFR 3102.6-1(a) is attached, nor any direction requiring the offeror to so indicate. Thus, there is no apparent alternative but to attach or enclose the agency statement with the card and presume that BLM will identify it as such. Where, as here, the offeror submits an agency statement which is clearly intended to, and appears to, apply to the offer in question, the card is fully executed and BLM may not reject the offer because the offeror does not indicate on the face of the card that he has attached or enclosed the statement. No confusion was engendered in BLM by the subject filings, as each of the enclosures was readily identified as what it was intended to be, unlike the enclosure which accompanied the Reich offer.

The remainder of BLM's decision on this first point deals with appellants' failure to refer to an earlier submission in another case and to include a dated statement that the agent's authority was still in effect. Under 43 CFR 3102.6-1(a), an offeror whose card is signed by his agent has a choice. Either he may refer BLM to an earlier case in which he had filed a statement evincing the agent's authority to sign and disclosing his interest, if any, in the offer and make a dated statement that this earlier statement is still applicable, or he may simply submit a new agency statement. As we have held that appellants filed valid new agency statements with their cards, their failure to meet the alternative requirements for compliance by reference to earlier statements is immaterial.

[2] There is no requirement in 43 CFR 3102.6-1(a)(2) that required separate agency statements be dated. The agency statements are adjuncts to the drawing entry cards themselves. Thus, the dating of the cards serves to certify that the statements made on the statements are also true as of the date on the card. If it is determined that the statements were untrue at the time the card was dated, the offers may then be rejected.

[3] Finally, the question of the propriety of submitting agency statements over facsimile signatures was recently considered at length by the Board in W. H. Gilmore, 41 IBLA 25 (1979), where the Board concluded that such practice did not violate the requirements of 43 CFR 3102.6-1(a)(2). 2/ Accordingly, we reverse BLM's decision and remand the matter for issuance of leases to appellants if all else is regular with their offers.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed and remanded.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Newton Frishberg
Chief Administrative Judge

2/ It is appellants' assertion that the attachments were photocopies of statements which were signed personally by each of them with their own holographic signatures.

Appendix

<u>IBLA Number</u>	<u>Case Name</u>	<u>Offer Number</u>		
79-172	Frederick T. Peters	NM 34663 (Ok.)		
79-173	R. J. Russette	NM 35320		
79-174	Amey M. Harrison	NM 34646		
79-176	Cynthia S-H. Bowers	NM 34255		
79-177	Donald A. Beck	NM 35315		
79-179	Kenneth K. Kohrs	NM 34577		
79-180	Joseph Fiato	NM-A 35372		
79-181	Irwin Kramer	NM 35543		
79-182	William Feick, Jr.	NM 35554		
79-183	Barbara R. Michaels	NM 35163		
79-184	Phyllis Johnston	NM 34574		
79-188	Marvyn Carton	NM 3465979-191	Sherwin Gandee	NM 35322
79-192	Phyllis Johnston	NM 35096		

